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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 386

JOHN H. ROWE, PETITIONER

v.

JOHN B. COLPOYS ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR JOHN B. COLPOYS IN OPPOSITION

OPINIONS BELOW

No opinion was rendered in the United States District Court for the District of Columbia. The opinion of the United States Court of Appeals for the District of Columbia (R. 43–48) is reported at 137 F. (2d) 249.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered June 28, 1943 (R. 49). The petition for a writ of certiorari was filed September 25, 1943. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a license to sell alcoholic beverages issued by the District of Columbia Alcoholic Beverage Control Board is subject to levy on execution to satisfy a judgment of the Municipal Court of the District of Columbia.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the statutes and regulations involved are set forth in the Appendix (pp. 7–10, *infra*).

STATEMENT

On March 20, 1940, a writ of execution was issued against petitioner and his wife (R. 34–35) upon a judgment of the Municipal Court of the District of Columbia which had been rendered against them in the amount of $143 (R. 36).[1] Petitioner operated a sea food restaurant where food and liquor were sold (R. 10, 26). On April 6, 1940, a Saturday evening, two deputy marshals and a representative of the judgment plaintiff undertook to levy execution on petitioner's property by removing his license to sell beverages, with its frame and glass, and refusing to surrender it until petitioner paid part of the judgment (R. 10,

[1] It was stipulated in oral argument before the Court of Appeals that the judgment of the Municipal Court was valid and that petitioner was liable for its satisfaction (R. 44).

14–15, 16–17). The men were in petitioner's premises from 11:00 p. m. to some twenty minutes before midnight (R. 14, 17). After closing at midnight, petitioner did not reopen until the following Tuesday (R. 17), when the levy was released upon petitioner's making a payment (R. 11–12, 35).

Alleging that his license was not liable to levy and had been improperly seized, resulting in the closing of his restaurant, petitioner together with his wife brought suit for damages in the District Court against respondent Colpoys, United States Marshal for the District of Columbia, the surety on his official bond, and the judgment plaintiff (R. 1–5). Colpoys' answer denied malice and alleged that the levy was in accordance with law (R. 7).

Petitioner introduced evidence as to his gross receipts for both food and beer (R. 17, 18, 20–21), but his attorney conceded that he could present no further evidence to show loss of profits (R. 24). At the conclusion of petitioner's evidence the District Court directed a verdict in defendants' favor on the ground that petitioner had wholly failed to establish the amount of any loss (R. 25–26). The Court of Appeals affirmed, but on the ground that petitioner's interest in the license was properly subject to levy on execution (R. 43–48).

ARGUMENT

No question of substantial or general importance is involved. The only issue presented re-

lates exclusively to the local law of the District of Columbia concerning levy on execution. And as to this the decision below is probably correct.

1. Under the District of Columbia Code (1940 Ed.), the writ of *fieri facias* may be levied on all nonexempt "goods and chattels of the debtor" (§ 15–210), and on his "equitable interest * * * in personal chattels" (§ 15–212). An execution levied on a municipal court judgment becomes "a lien on the personal property of the judgment defendant" (§ 15–209). The court below held that the liquor license issued to petitioner by the District of Columbia Board was a "valuable right, with attributes of property and transferable value, in the market of alcoholic beverage distribution," and hence a "form of property right" subject, together with its "tangible evidence," to execution (R. 48).

The transferability of such a license, upon consent of the proper authorities, is recognized in the Alcoholic Beverage Control Act (D. C. Code (1940 Ed.) §§ 25–106, 25–107, 25–117), and has been judicially acknowledged. Thus, a licensee's interest may be pledged (*In re Fisher,* 98 Fed. 89 (D. Mass.), affirmed, 103 Fed. 860 (C. C. A. 1); *Niles* v. *Mathusa,* 162 N. Y. 546), or converted (*Jaffe* v. *Pacific Brewing & Malting Co.,* 69 Wash. 308; cf. *Bachmann-Bechtel Brewing Co. v. Gehl,* 154 App. Div. 849), or may pass to a trustee in bankruptcy (*In re Becker,* 98 Fed. 407

(E. D. Pa.); *In re Fisher, supra*). Cf. *Commission for Polish Relief* v. *Banca Nationala,* 288 N. Y. 332. In the light of the cited authorities, the decision below can hardly be deemed such a departure from accepted principles as to call for an exercise of this Court's reviewing power. Cf. *Work* v. *United Globe Mines,* 231 U. S. 595. The Court of Appeals did not question the powers of the licensing authority to approve or disapprove a transfer of the license *via* execution. The asserted conflict (Pet. 3) with *Crowley* v. *Christensen,* 137 U. S. 86, and *Richards* v. *Geiger,* 39 App. D. C. 278, is consequently without basis.[2]

2. The question presented is inherently local. Cf. *Tracy* v. *Ginzberg,* 205 U. S. 170; *In re Flaherty,* 184 Fed. 962 (E. D. Va.) The legal attri-

[2] Several circumstances in this case render it an unsuitable vehicle for review of the question involved, even if its importance otherwise warranted it. The suit is for damages allegedly caused by the closing of petitioner's establishment, which he asserts was due to the seizure of the license (R. 3). But in addition to petitioner's failure to prove loss of profits with reasonable certainty (*Di Palma* v. *Weinman*, 16 N. M. 302, affirmed, 232 U. S. 571), there is nothing in the Alcoholic Beverage Control Act which makes it a condition precedent to the sale of beer that the license be on display. And Section 8 (a) of the Alcoholic Beverage Control Regulations (R. 28) does not forbid the sale of beer where the license is withheld through no fault of the licensee. Moreover, the serving of food must be the chief source of revenue at the class D (R. 26) licensed establishment (D. C. Code (1940 Ed.) § 25–103 (n), § 25–111 (h)), and petitioner apparently aggravated his loss, if any, by closing down when he might have continued to serve food.

butes and value of a District of Columbia liquor license depend upon local conditions and administrative practices which are not apparent from the record here. The case thus calls for the application of the settled rule of this Court that questions limited to the District of Columbia ordinarily will not be reviewed on certiorari. See *Del Vecchio* v. *Bowers,* 296 U. S. 280, 285. Cf. *Washington Fidelity Ins. Co.* v. *Burton,* 287 U. S. 97, 100, 102 (dissenting opinion of Mr. Justice Stone); *American Security Co.* v. *District of Columbia,* 224 U. S. 491.

CONCLUSION

The issue presented is purely local and lacks general importance. The decision below is probably correct. It is respectfully submitted that the petition for certiorari should be denied.

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OCTOBER 1943.